

**QUESTIONS: RISK ALLOCATION – EXCUSES FOR NON-PERFORMANCE -
FRUSTRATION AND MISTAKE**

1. Is the following statement true or false? (1)

If the parties have provided for their own allocation of the risk in the contract, then the doctrines of frustration and mistake cannot apply.

2. What is the general effect of frustration on a contract at common law? (2)

3. How do courts decide whether frustration has occurred? (2)

4. Name the three basic frustratory events. (3)

5. Distinguish *Krell v Henry* and *Griffith v Brymer*. (2)

Why is this distinction important? (2)

6. On what basis can *Krell v Henry* and *Herne Bay Steam Boat v Hutton* be distinguished? (2)

7. In what circumstances is it not possible to rely on the frustration doctrine despite the fact that it appears that a frustratory event has occurred? (3)

8. Explain the effect of s.1(2) Law Reform (Frustrated Contracts) Act 1943. (3)

9. What is the philosophy underlying Robert Goff J's approach to the 1943 Act in *BP v Hunt (No 2)*? (1)

Explain how this philosophy might relate to s.1(2) and (3). (1)

10. Explain the significance of the decision of Garland J in *Gamerco v ICM* (1).

11. What is the alternative philosophy suggested by some academics - and why? (4)

12. Explain how the courts would assess the just sum to award under s.1(3) of the 1943 Act. (4)

13. Distinguish what is meant by a contract that is void for mistake from a contract that is merely voidable. (2)

14. Explain the decision of *McRae v Commonwealth Disposals Commission* in the context of common mistake. (3)

15. Why is it generally the case that a common mistake as to quality does not render the contract void? (1)

16. Can a party who made a common mistake as to quality ever avoid the contract he has made? (3)

Total available points: 40